

Savings Fund been made during the period of the error when they should have otherwise been made.

*Make-up contributions* means employee contributions to the Thrift Savings Plan that should have been deducted from a participant's basic pay earlier, but were not due to an employing agency error.

*MSPB* means the Merit Systems Protection Board described in chapter 12 of title 5, United States Code.

*OPM* means the Office of Personnel Management.

*Present value factor* has the same meaning as in § 831.2202 or § 842.702 of this chapter, as applicable.

*Previously corrected* means a retirement coverage error that has been properly corrected before March 19, 2001.

*Qualifying court order* has the same meaning as in § 846.702 of this chapter, referring to court orders that affect CSRS or FERS payments following a divorce or legal separation.

*Qualifying retirement coverage error* means an erroneous decision by an employee or agent of the Government as to whether Government service is CSRS covered, CSRS Offset covered, FERS covered, or Social Security-Only covered that remained in effect for at least 3 years of service after December 31, 1986.

*Reemployed annuitant* means a CSRS or FERS retiree who is reemployed under conditions that do not terminate the CSRS or FERS annuity. (See part 837 of this chapter for additional information on reemployed annuitants.)

*Retiree* means a former employee or Member who is receiving, or meets the statutory age and service requirements for, an annuity under either CSRS or FERS. This includes individuals who meet the statutory requirements for benefits and chose to postpone the beginning date of the annuity under § 842.204(c) or § 842.212(b)(1)(ii) of this chapter (pertaining to FERS MRA+10 and FERS deferred benefits). Retiree does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity. An individual who has left Federal service after completing 5 years of service but has not reached the age at which annuity payments

may begin is considered a "separated employee" rather than a retiree.

*Retirement coverage* means participation in CSRS, CSRS Offset, FERS, or Social Security-Only. Retirement coverage is shown on the Notification of Personnel Action (Standard Form 50) or other similar record of personnel actions.

*Retirement plan* means the same as *retirement coverage*.

*Separated employee* means a former employee or Member who has separated from service and who has not met all the requirements for retirement under CSRS or FERS.

*Social Security coverage* means service as a Federal employee that is employment under section 210 of the Social Security Act (42 U.S.C. 410) and is subject to Social Security taxes.

*Social Security-Only* means coverage under Social Security without concurrent coverage under CSRS, CSRS Offset, or FERS.

*Social Security taxes* means the Old Age, Survivors, and Disability Insurance taxes imposed on employees under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)) and on employers under section 3111(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3111(a)).

*Survivor* means a person entitled to benefits under chapter 83 or 84 of title 5, United States Code, based on the service of a deceased employee, separated employee, or retiree.

*Thrift Savings Plan or TSP* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8351 and 8401-8479.

## Subpart B—Eligibility

### GENERAL PROVISIONS

#### § 839.201 Do these rules apply to me?

(a) These rules apply to employees who had a qualifying retirement coverage error. For all purposes, a qualifying retirement coverage error must have lasted for at least 3 years of Federal service after December 31, 1986, as stated in the definitions section (§ 839.102). It does not matter whether

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you have left Federal service, retired, or have been reemployed as an annuitant, as long as you had a qualifying retirement coverage error. In addition, the survivor of an employee, separated employee, or retiree who had a qualifying retirement coverage error is also covered by these rules.

(b) An error that lasted less than 3 years of Federal service after December 31, 1986, is not qualifying under the rules in this part.

(c) For errors lasting less than 3 years that involve erroneous placement in FERS during a period that the employee was eligible to elect FERS, see § 846.204(b) of this chapter for guidance.

### ELECTION OPPORTUNITY

#### **§ 839.211 If these rules apply to me because I had a qualifying retirement coverage error, can I choose which retirement plan I want to be in?**

The FERCCA does not provide an election opportunity in all situations where there was a qualifying retirement coverage error. Even if your error is one that provides an election opportunity under the FERCCA, certain events may disqualify you from making an election under the FERCCA. If you had a qualifying retirement coverage error, your eligibility to choose your retirement plan may be affected by the situations described in the next seven questions.

#### **§ 839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?**

If your qualifying retirement coverage error was previously corrected to FERS and you then received a refund of your FERS retirement deductions, you are not allowed to elect retirement plan coverage under the FERCCA.

#### **§ 839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?**

(a) You may not make a retirement coverage election if your qualifying retirement coverage error was previously corrected to FERS, and you later received one of the following TSP withdrawals:

(1) A TSP annuity after separation from service, but before receiving a FERS annuity; or

(2) A single payment or monthly payments after separation from service; or

(3) An age-based in-service withdrawal.

(b) If you received an automatic cashout of your TSP account after you separated (because your account balance was \$3,500 or less), or if you received a financial hardship in-service withdrawal, you may make a retirement coverage election.

#### **§ 839.214 Am I disqualified from making an election of retirement coverage under the FERCCA if I withdrew my TSP account after I retired under FERS?**

No, you may make an election of retirement coverage under the FERCCA if you made a TSP withdrawal as a retiree.

#### **§ 839.215 May I make a retirement coverage election under the FERCCA if I received a payment as settlement of my claim for losses because of a qualifying retirement coverage error?**

You can make a retirement coverage election under the FERCCA if OPM waives repayment of the entire amount under § 839.1202. If OPM does not waive the entire repayment, you must pay back the amount that OPM did not waive.

### PREVIOUS ELECTION OPPORTUNITY

#### **§ 839.221 If my qualifying retirement coverage error was that I was put into FERS by mistake and then, after the error was discovered, I chose my current retirement coverage, can I now make another election?**

No, OPM regulations allow certain employees who were put in FERS in error to choose between remaining in FERS or being covered under their automatic retirement coverage. (See § 846.204(b)(2) of this chapter). If you already had this opportunity to choose your retirement coverage; then you may not make an election of retirement coverage based on the same error under these rules.